Update: Developments in U.S. International Trade Dispute Settlement

September 9, 1997

SUMMARY:

- ***WTO proceedings in which U.S. is a plaintiff:*** **27** cases in total, of which **6** are before panels, **2** recently completed appellate proceedings, **2** recently completed panel proceedings, **14** are in consultations, and **3** are in the implementation or settlement phase.

- ***WTO proceedings in which U.S. is a defendant:*** **11** cases in total, of which **1** is before a panel, **7** are in consultations, and **3** are in the implementation or settlement phase.

- ***WTO proceedings in which U.S. is a third-party participant (amicus):*** **11** cases in total, of which **3** are before panels, **7** are in consultations and **1** recently completed panel proceedings.

- ***NAFTA Chapter 20 proceedings in which the U.S. is a plaintiff:*** **2** cases, both of which are in consultations.

- ***NAFTA Chapter 20 proceedings in which the U.S. is a defendant:*** **5** cases in total, of which **1** is before a panel, **3** are in consultations and **1** has been settled.

EVENTS SINCE THE LAST UPDATE:

Highlights: Since the last Update, the United States has prevailed in three more WTO proceedings: the WTO appellate proceedings on the EC banana regime, and panel proceedings on the EC's ban on growth hormones and India's failure to provide intellectual property rights protection. The WTO Dispute Settlement Body (DSB) has adopted the panel and Appellate Body reports on Canada's measures on split-run magazines, and Canada has announced it will comply with the recommendations in the reports. Four other cases were successfully settled.

- On September 9, the WTO Appellate Body circulated its report in the dispute on the EU's import regime for bananas. The report broadly upheld the arguments made by Ecuador, Guatemala, Honduras, Mexico and the United States, and rejected almost all of the arguments of the EU; see page 15 below for details.

- On September 9, the panel in the NAFTA Chapter 20 challenge by Mexico to a U.S. safeguard action on broom corn brooms held its hearing in Washington.

- On September 5, the panel report was circulated in the dispute concerning India's failure to provide a "mailbox" system for future patenting of agricultural and pharmaceutical

chemicals. The panel report completely upheld U.S. arguments and found that India has failed to comply with its obligations.

" On September 4, the United States requested WTO consultations with Mexico concerning Mexico's antidumping investigation, preliminary determination and provisional duties on high-fructose corn syrup from the United States.

" On September 2, the United States and Canada announced that they had successfully settled a NAFTA dispute and Canada had withdrawn its complaint concerning the U.S. re-export program for sugar-containing products. On September 8, the two governments announced that they had finalized the terms of a settlement agreement.

" On August 29, Canada notified the DSB that it is Canada's intention to meet its obligations under the WTO with regard to the recommendations in the panel and Appellate Body reports on Canada's discriminatory measures against "split-run" magazines. These reports had been adopted by the DSB on July 30. The reports, a win for the United States, rejected Canada's argument that the excise tax is a services trade measure; found that Canada's tax on split-run magazines discriminates against imports contrary to GATT Article III:2, and found that Canada's "funded" postal rates for Canadian magazines discriminate against imported magazines.

" On August 20, the United States informed the DSB that USEPA Administrator Carol Browner had signed a final rule on reformulated and conventional gasoline. This rule completes the implementation process in the WTO dispute concerning this matter. The rule was developed in compliance with all requirements of the Uruguay Round Agreements Act. With completion of USEPA's rulemaking process on conventional and reformulated gasoline, the United States now has no implementation issues outstanding.

" On August 18, the WTO released the final panel report in the dispute brought by the United States against the EU's hormone ban. The report upheld the claims of the United States, finding that the EU has no scientific basis for blocking the sale of American beef in Europe.

" On August 18, 1997, the EU requested consultations with the United States concerning a ban on imports of EU poultry and poultry products, imposed on May 5, 1997 by the Food Safety Inspection Service of the U.S. Department of Agriculture until the United States is able to obtain additional assurances of adequate product safety.

" On August 15, Korea requested consultations with the United States concerning the Commerce Department's antidumping review on DRAMs from Korea.

- On August 7, Korea consulted with the United States concerning the Commerce Department's administrative review of the antidumping order on color television receivers from Korea.

- On August 5, Chile requested consultations concerning the Department of Commerce's initiation of a countervailing duty investigation of salmon from Chile.

- On July 30, the DSB established a panel in the U.S. complaint against Indonesia's national car program. The panel has been consolidated with the panels established on June 12 in the disputes brought by Japan and the EU on the same matter.

- At the July 30 DSB meeting, Australia, Argentina, New Zealand and the United States jointly notified the DSB of a mutually agreeable solution reached between them and Hungary settling a dispute concerning Hungary's export subsidies on agricultural products.

- Also on July 30, the DSB established a panel concerning a complaint by Brazil against EU tariff quotas on poultry, and the United States reserved the right to present views as an interested third party.

- On July 23, the second panel meeting with the parties took place in the WTO dispute concerning Argentina's specific duties on footwear, textiles and apparel, and three percent ad valorem statistical tax.

- On July 22, the United States, the EU and Japan held consultations under the Agreement on Government Procurement concerning the Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar) enacted by Massachusetts on June 25, 1996.

- On July 21-22, the Appellate Body held its oral hearing in the appeal of the panel report on the EU import regime for bananas. The parties had filed their appellee submissions on July 9.

- On July 17, the United States and Turkey notified the DSB of the successful settlement of the U.S. complaint against Turkey's discriminatory film taxes.

- On July 17, the United States consulted with Mexico under NAFTA Chapter 20 concerning an internal notice of the U.S. Customs Service clarifying the tariff classification of Persian limes. The United States also consulted under NAFTA Chapter 20 concerning Mexico's request for designation of the Mexicali valley as free from karnal bunt disease for purposes of wheat exports.

- On July 16, the United States requested consultations with India under the GATT and the Agreement on Import Licensing concerning the import quotas maintained by India on over 2700 product categories. Consultations on the same measures were also requested on July 16 by Australia, Canada and New Zealand, on July 18 by Switzerland, and on July 21 by the EU.

- On July 15, the EU and United States agreed to commit themselves to achieving a satisfactory resolution of their differences concerning rules of origin for textiles, in the context of the 1997-98 WTO negotiations on harmonization of rules of origin for textiles.

- On July 10, the second panel meeting with the parties took place in the WTO disputes concerning EU, Irish and U.K. impairment of tariff concessions on LAN equipment and PCs with multimedia capability. Arguments have now closed in this case.

- On July 10, Korea requested consultations concerning the Commerce Department's antidumping administrative review determination on television receivers from Korea.

The next DSB meeting is scheduled to take place on September 25, 1997.

NOTE: All circulated WTO panel and appellate body reports are now available on the Internet from the WTO's World Wide Web site, at http://www.wto.org/wto/dispute/distab.htm. Current WTO dispute settlement documents are available, as of the day after circulation in Geneva, from the WTO Document Dissemination Facility (http://www.wto.org/wto/ddf/daily/public.html). For convenience this paper indicates the WTO document series numbers for each dispute listed.

I. WTO

A. Proceedings in which the United States is a plaintiff (26)

1. Mexico—Antidumping investigation of high fructose corn syrup from the United States (U.S. v. Mexico)

New case: On September 4, the United States requested consultations with Mexico under Article 17.3 of the Agreement on Implementation of Article VI (the Antidumping Agreement) concerning Mexico's antidumping investigation of high fructose corn syrup (HFCS) from the United States (WT/DS101/1). The antidumping investigation was initiated on the basis of a petition from the Mexican sugar industry. Problems cited include failure to determine whether there was sufficient evidence that the original petition was made by or on behalf of the domestic industry, failure to provide proper notification to the United States and failure to provide the U.S. industry timely access to the relevant information needed in the presentation of its case. The two parties are discussing a date for consultations.

2. India—Import quotas on agricultural, textile and industrial products (U.S. v. India)

New case: On July 16, the United States requested consultations under Article XXII of GATT 1994 and the Agreement on Import Licensing concerning import quotas on over 2700 product categories maintained by India (WT/DS90/1). India was formerly entitled to maintain such quotas under the balance-of-payments (BOP) exceptions of GATT, but its BOP justification ended earlier this year. Consultations on the same measures were also requested on July 16 by Australia, Canada and New Zealand, on July 18 by Switzerland, and on July 21 by the EU. Consultations between the United States and India will be held on September 17.

3. Sweden—Measures affecting the enforcement of intellectual property rights (U.S. v. Sweden)

The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") requires in Articles 50, 63, and 65 that all WTO Members provide provisional relief in civil enforcement proceedings. Courts must be granted the ability to order unannounced raids to determine whether infringement is taking place, and to either seize allegedly infringing products as evidence or to order that allegedly infringing activities be stopped pending the outcome of a civil infringement case. The availability of provisional relief in the context of civil proceedings is of great importance to certain industries dependent upon intellectual property protection. Sweden has not implemented this obligation. On May 27, the United States requested consultations with Sweden under the TRIPS Agreement (WT/DS/85/1). Initiation of this complaint was announced by Ambassador Barshefsky on April 30 as part of the Special 301 Annual Review for 1997. Consultations were held on June 27.

4. Korea—Taxes on alcoholic beverages (U.S. v. Korea)

Korea taxes whisky and other Western-type distilled spirits at rates far less than the rates applicable to soju, a Korean distilled spirit. On May 23, the United States requested consultations under GATT Article XXII concerning Korea's taxes on distilled spirits (WT/DS84/1). Consultations were held on June 24. The United States participated on May 29 in consultations on the same matter held at the request of the EU (see page 24 below).

5. Denmark—Measures affecting the enforcement of intellectual property rights (U.S. v. Denmark)

The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") requires in Articles 50, 63, and 65 that all WTO Members provide provisional relief in civil enforcement proceedings. Denmark has not implemented this obligation. On May 14, the United States requested consultations with Denmark under the TRIPS Agreement (WT/DS/83/1). Initiation of this complaint was announced by Ambassador Barshefsky on April 30 as part of the Special 301 Annual Review for 1997. Consultations took place on June 10. A second round of consultations will take place on September 19.

6. Ireland—Measures affecting the grant of copyright and neighboring rights (U.S. v. Ireland)

Ireland has not yet amended its copyright law to provide copyright and neighboring rights consistent with Articles 9-14, 63, and 65 of the TRIPS Agreement. Examples of TRIPS inconsistencies include absence of a rental right for sound recordings, no "anti-bootlegging" provision, and very low criminal penalties which fail to deter piracy. On May 14, the United States requested consultations with Ireland under the TRIPS Agreement (WT/DS82/1). Initiation of this complaint was announced by Ambassador Barshefsky on April 30 as part of the Special 301 Annual Review for 1997. Consultations took place on May 30.

7. Belgium—Measures affecting commercial telephone directory services (U.S. v. Belgium)

On May 2, the United States requested consultations with Belgium under the General Agreement on Trade in Services (GATS) concerning Belgian government measures which appear to discriminate against ITT Promedia, N.V., a U.S. supplier of commercial telephone directory services. The Belgian measures include imposition of conditions for obtaining a license to publish commercial directories, and Belgian measures governing the acts, policies and practices of Belgacom B.V. with respect to telephone directory services. The consultation request (WT/DS80/1) cited possible denial of national treatment and most-favored-nation treatment by Belgium, as well as possible violation of obligations under GATS Articles VI and VIII and nullification or impairment of benefits under specific GATS commitments made by the EC on behalf of Belgium. Consultations took place on June 20.

8. *Japan—Measures affecting imports of agricultural products (U.S. v. Japan)*

On April 7, 1997, the United States requested consultations with Japan regarding the prohibition by Japan on imports of agricultural products. Specifically, for those agricultural products for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product. The consultation request (WT/DS76/1) notes that these measures appear to be inconsistent with provisions of several WTO agreements, including Articles 2, 4, 5 and 8 of the Agreement on the Application of Sanitary and Phytosanitary Measures; Article XI of GATT 1994; and Article 4 of the Agreement on Agriculture. The consultations took place on June 5.

9. *Philippines—Measures affecting pork and poultry (U.S. v. Philippines)*

On April 1, 1997, the United States requested consultations with the Philippines regarding the implementation by the Philippines of its tariff-rate quotas for pork and poultry. The consultation request (WT/DS74/1) notes that implementation of these tariff-rate quotas (in particular the delays in permitting access for the in-quota quantities and the licensing system used to administer

access to the in-quota quantities) appear to be inconsistent with provisions of several WTO agreements, including Articles III, X and XI of GATT 1994; Article 4 of the Agreement on Agriculture; Articles 1 and 3 of the Agreement on Import Licensing Procedures; and Articles 2 and 5 of the Agreement on Trade Related Investment Measures (TRIMs Agreement). The consultations were held on April 30, with the participation as well of the EU and Canada. The United States is now evaluating changes made by the Philippines in implementation of the tariff-rate quotas.

10. *Ireland—Reclassification of LAN equipment (U.S. v. Ireland)*

Since 1995, customs authorities in Ireland have been applying tariffs to imports of local area network (LAN) equipment in excess of those provided for in the applicable schedule of tariff concessions under the GATT 1994. These increases have resulted from the reclassification of various types of LAN equipment from HS 8471, automatic data processing equipment, to the HS 8517, telecommunications apparatus, which has a higher duty rate. The United States has argued that the treatment of these products contravenes Ireland's obligations under Article II of the GATT 1994. The United States first raised this matter with the EC, which asserted that certain actions were taken independently by Irish customs authorities. In light of the EC assertions, on February 14, 1997, the United States requested consultations with the Government of Ireland (WT/DS68/1). On February 24, the EC, responding on behalf of Ireland, officially rejected the U.S. request for consultations. On March 7, the United States requested establishment of a panel. As agreed between the United States and the EC, the DSB, at its meeting on March 20, modified the terms of reference of the panel previously established to consider the U.S. complaint against the EC (*see* item 12 below) so as to include the matters raised in the U.S. v. Ireland complaint. The first U.S. brief was submitted on May 14. The first panel meeting with the parties took place on June 12.

Recent developments: The second panel meeting took place on July 10. Arguments have now closed. The panel report is scheduled to be circulated in late November 1997.

11. *United Kingdom—Reclassification of LAN equipment and multimedia PCs (U.S. v. UK)*

Since the Uruguay Round, customs authorities in the United Kingdom have been applying tariffs to imports of local area network (LAN) equipment and multimedia personal computers (PCs) in excess of those provided for in the applicable schedule under the GATT 1994. These increases have resulted from the reclassification of these products from the automatic data processing category to categories with higher duty rates. The United States has argued that the treatment of these products contravenes the United Kingdom's obligations under Article II of the GATT 1994. The United States first raised this matter with the EC, which asserted that certain actions were taken independently by British customs authorities. In light of the EC assertions, on February 14, 1997, the United States requested consultations with the Government of the United Kingdom (WT/DS67/1). On February 24, the EC, responding on behalf of the United Kingdom, officially

rejected the U.S. request for consultations. On March 7, the United States requested establishment of a panel. As agreed between the United States and the EC, the DSB, at its meeting on March 20, modified the terms of reference of the panel previously established to consider the U.S. complaint against the EC (*see* item 12 below) so as to include the matters raised in the U.S. v. U.K. complaint. The first U.S. brief was submitted on May 14. The first panel meeting with the parties took place on June 12.

Recent developments: The second panel meeting took place on July 10. Arguments have now closed. The panel report is scheduled to be circulated in late November 1997.

12. *EC—Reclassification of LAN equipment and multimedia PCs (U.S. v. EU)*

In June 1995, the EC issued a regulation reclassifying certain local area network (LAN) adapter cards from the tariff category for automatic data processing (ADP) equipment to the telecommunications apparatus category, resulting in increases in the tariffs on these products to a level above the rate provided for in the EC's schedules under the GATT 1994. In addition, since the Uruguay Round, customs authorities in certain EC member States have taken action to reclassify local area network (LAN) adapter cards and multimedia-equipped personal computers (PCS) from "automatic data processing equipment" to other tariff categories. The reclassification has the effect of raising duty rates to levels above the bound rate for ADP equipment, thereby impairing EC tariff concessions in contravention of Article II of the GATT 1994. After technical talks in 1996 failed to achieve progress on this issue, on November 8, 1996, the United States requested consultations with the EC under Article XXII of the GATT 1994 (WT/DS62/1). Consultations took place on January 23, 1997. On February 11, the United States requested the establishment of a panel. At its February 25 meeting, the DSB established a panel with respect to the complaint against the EC. Japan, Singapore, Korea and India indicated third party interest. At its meeting on March 20, the DSB modified the terms of reference of the panel so as to include the matters raised in the related U.S. complaints against Ireland and the United Kingdom (*see* items 4 and 5, above). The parties then agreed on the following panelists: Crawford Falconer, chair (New Zealand), Ernesto de la Guardia (Argentina), and Carlos Antonio da Rocha Paranhos (Brazil). The first U.S. brief was submitted on May 14. The first panel meeting with the parties took place on June 12.

Recent developments: The second panel meeting took place on July 10. Arguments have now closed. The panel report is scheduled to be circulated in late November 1997.

13. *Indonesia—National car program (EU v. Indonesia, Japan v. Indonesia, U.S. v. Indonesia)*

Since 1993, Indonesia has granted tax and tariff benefits to producers of automobiles based on the percentage of local content of the finished automobile. In 1996, the Indonesian Government established the "National Car Program," which grants "pioneer" companies luxury tax- and tariff-free treatment if they meet gradually-increasing local content requirements. Pioneer companies

must be Indonesian-owned, produce the automobile in Indonesia, and use a unique, Indonesian-owned trademark on the automobile. Pioneer companies also may be granted the right, over a one-year period, to import finished automobiles from outside Indonesia and still receive the exemption from the luxury tax and tariffs on the imported autos; in this case, the foreign company manufacturing the "national car" outside of Indonesia must enter a countertrade arrangement. One company, PT Timor Putra Nasional, has been granted pioneer status, has been given the right to import 45,000 finished cars in a one-year period, and has begun to do so from its Korean partner, Kia Motor Corporation.

On October 3, 1996, the EU requested consultations with Indonesia concerning Indonesia's national car program (WT/DS54/1). On October 4, Japan requested consultations concerning the same matter (WT/DS55/1). On October 8, the United States also requested consultations (WT/DS59/1) concerning the National Car Program and tying of tax and tariff benefits to local content; the U.S. cited GATT Articles I:1, III:2, III:4, III:5 and III:7; TRIMs Article 2; Subsidies Agreement Articles 3, 6 and 28.2; and TRIPS Articles 3, 20 and 65.5. The U.S. consultation request was made as part of a Section 301 investigation of this matter, initiated on October 8. The United States, Japan and the EU consulted with Indonesia on November 4, 5 and 6 respectively. On November 29, Japan requested consultations (WT/DS64/1) with regard to the the Subsidies Agreement. A followup round of U.S.-Indonesia consultations was held on December 4. Informal consultations have continued since that time.

On April 17, 1997, Japan requested establishment of a panel to examine its complaints against Indonesia. On May 12, 1997, the EU too filed a panel request; in addition, the EU alleged that the Indonesian measures displace or impede imports of EU motor vehicles and thus constitute specific subsidies causing serious prejudice under Article 6 of the SCM Agreement, and the EU requested that the DSB initiate a special procedure under Annex V of the SCM Agreement to develop evidence of serious prejudice. On June 12, panels were established in response to the Japanese and EU requests; the two disputes were consolidated into one proceeding. The report in the Annex V procedure is due in mid-August. The United States has reserved its rights as a third party with respect to that panel. On June 12, the United States requested a panel in order to preserve its rights, while stating that we continue to pursue consultations aimed at achieving a market-opening settlement; the United States too has invoked Annex V.

Recent developments: On July 29, in response to a request by Japan and the EU, the WTO Director-General composed the panel in the EU/Japan v. Indonesia dispute as follows: Mohamed Maamoun Abdel Fattah, chairman (Egypt), Ole Lundby (Norway) and David Walker (New Zealand). On July 30, a panel was established in response to the U.S. request. The U.S.-Indonesia dispute has been consolidated with the EU/Japan v. Indonesia dispute in one panel proceeding. The Annex V procedure invoked by the United States has been initiated; Stuart Harbinson (Hong Kong) was appointed as the DSB's representative to facilitate the information gathering process.

14. ***Australia—Prohibited export subsidies on leather (U.S. v. Australia)***

On October 7, 1996, the United States requested consultations with Australia concerning subsidies available to leather under the Textile, Clothing and Footwear Import Credit Scheme (TCF scheme) and any other subsidies to leather granted or maintained in Australia which are prohibited under Article 3 of the Subsidies Agreement (WT/DS57/1). Under the TCF scheme, exporters of eligible products earn import credits which are calculated as a percentage of the domestic value added content of their exports, and which enable the holder of the credits to reduce the amount of customs duty paid on eligible imported goods by an amount up to the value of the credits held. The request cited only Article 3 of the Subsidies Agreement, and was made under Article 30 of that agreement (to the extent that it incorporates by reference GATT Article XXIII). The U.S. consultation request was made as part of a Section 301 investigation of this matter, initiated on October 3. Consultations were held on October 31.

On November 25, Ambassador Barshefsky and Australian Deputy Prime Minister Fisher announced successful settlement of the complaint, with an agreement by Australia to excise automotive leather from eligibility under the Import Credit Scheme and the Export Facilitation Scheme by April 1, 1997. Subsequently, Australia announced a new package of subsidies (grants and preferential loans) to the sole Australian exporter of automotive leather. The United States is considering options for possible action against these new subsidies.

15. ***Argentina—Specific duties on footwear, textiles and apparel and 3 percent ad valorem statistical tax (U.S. v. Argentina)***

On October 4, 1996, the United States requested consultations with Argentina concerning specific duties imposed on various footwear, textile and apparel items in excess of Argentina's tariff commitments; a statistical tax of 3 percent *ad valorem;* and measures requiring that imports of footwear, textiles and apparel be labeled with the number of a corresponding affidavit of product components filed with the Argentine government (WT/DS56/1). The consultation request noted possible violation of Argentina's obligations under GATT Articles II, VII, VIII and X; Articles 1 through 8 of the Agreement on Implementation of Article VII (Customs Valuation Agreement); Article 2 of the Agreement on Technical Barriers to Trade; and Article 7 of the Agreement on Textiles and Clothing, and was made under GATT Article XXII and the corresponding provisions of these other agreements. The U.S. consultation request was made as part of a Section 301 investigation of this matter, initiated on October 4. The United States and Argentina consulted on November 12, with the EU and Hungary participating as interested third parties. During the consultations, Argentina represented that it had revised its labeling requirements in a manner that satisfied U.S. concerns. However, there was no resolution regarding U.S. objections to Argentina's specific duties and the 3 percent *ad valorem* statistical tax. On January 9, 1997, the United States requested establishment of a panel to examine the specific duties and statistical tax. At its February 25 meeting, the DSB established a panel, with the EU, Hungary and India indicating third-party interest. On April 4, the United States and Argentina agreed on the following panelists: Peter Palečka (Chair; Czech Republic); Peter May (Australia); and Heather

Forton (Canada). The first panel meeting took place on June 17-18. The EU has also asked for consultations; see page 24 below.

Recent developments: The second and final panel meeting took place on July 23. Arguments have now closed. The panel report is expected at the end of November 1997.

16. ***Brazil—Local content regime for automotive investment (Japan v. Brazil, U.S. v. Brazil, EU v. Brazil)***

On July 30, 1996, Japan requested consultations under GATT Article XXII, the Agreement on Trade-Related Investment Measures (TRIMs Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), concerning Brazil's local content regime for automotive investment introduced in December 1995 (WT/DS51/1). On August 8, the United States requested to be joined in Japan's consultations. On August 9, the United States requested consultations on the Brazilian auto regime in its own right under Article XXII, the TRIMs Agreement and the Subsidies Agreement (WT/DS52/1). Both sets of consultations were held jointly in Geneva on August 13. Also participating in one or both sets of consultations were the EU, Korea and Canada.

On October 1, USTR announced that the United States and Brazil agreed to enter into intensive talks with the goal of removing the discriminatory impact of Brazil's practices on U.S. exports. In the meantime, on October 11, USTR initiated a Section 301 investigation of this matter.

On January 10, 1997, the United States requested formal consultations with Brazil concerning its new auto incentive programs (WT/DS65/1). These new programs provide (1) benefits to certain companies located in Japan, the Republic of Korea and the EC in the form of reduced tariffs on a specified number of vehicles; (2) benefits to companies investing in automotive manufacturing facilities in the North, Northeast and West Central regions of Brazil; and (3) benefits to manufacturers of motor vehicles and parts, in the form of a reduction in duties on imports of certain products, conditional on compliance with average domestic content requirements, trade-balancing and local content requirements with regard to inputs, and other criteria that may be imposed by the Ministry of Trade. The United States noted possible violations of the Brazil's obligations under GATT Articles I, II, III and XIII, as well as the TRIMS Agreement and the Subsidies Agreement. Consultations concerning the new programs took place in Geneva on February 20-21.

On May 7, 1997, the EU requested consultations with Brazil concerning its auto regime (DS81/1). The request contends that these measures violate GATT Articles I:1 and III:4, Articles 3, 5 and 27.4 of the Subsidies Agreement, and Article 2 of the TRIMs Agreement.

17. ***India—Implementation of "mailbox" and exclusive marketing rights provisions in the TRIPS Agreement (U.S. v. India)***

India does not now provide product patent protection for pharmaceutical or agricultural chemical products. Article 70.8 of the TRIPS Agreement requires countries that did not provide patent protection for such products as of January 1, 1995, to establish a "mailbox" mechanism through which persons may file patent applications for these products, which applications will be examined based on their filing date when patent protection is ultimately provided. Nor has India complied with Article 70.9 of the TRIPS Agreement, which requires the grant of exclusive marketing rights to products that are subject to mailbox applications under certain circumstances. On July 2, 1996, the United States requested consultations with India regarding its lack of compliance with these provisions (WT/DS50/1). At the consultations on July 27, India agreed that it is legally obligated to establish mailbox and exclusive marketing rights systems. In light of India's continuing inaction, the United States requested a panel on November 10, and at its meeting of November 20, the DSB established a panel to examine the U.S. complaint. The following panelists were chosen to hear the dispute: Thomas Cottier (Chair; Switzerland), Yanyong Phuangrach (Thailand), and Doug Chester (Australia). On April 28, the EC requested consultations concerning the same matter (see page 24 below).

Recent developments: On September 5, 1997, the panel report was circulated to the WTO and made public. The report is a victory on all counts for the United States. The panel agreed with U.S. arguments that India must establish a TRIPS-consistent mailbox system and that India has not yet done so. The panel rejected India's claim that receipt of mailbox applications through an unpublished administrative system qualified as compliance, found that the transparency obligations of TRIPS Article 63 now apply to measures in compliance with the LDC transitional provisions in Article 70.8, and found that if the administrative system were a means of such compliance India would be in violation of Article 63. The message is clear: for developing countries benefiting from phase-in of TRIPS obligations, the phase-in period will not be a free ride.

18. ***Japan—Measures affecting distribution services (U.S. v. Japan)***

On June 13, 1996, the United States requested consultations with Japan under Article XXIII of the General Agreement on Trade in Services, concerning measures affecting distribution services, applied by the Government of Japan pursuant to or in connection with the Large Scale Retail Stores Law (WT/DS45/1). These measures appear to violate GATS Articles III, VI, XVI and XVII, and to nullify or impair benefits accruing to the United States directly or indirectly under the GATS. Consultations took place on July 10. On September 20, the United States requested broader consultations with Japan concerning additional laws, regulations and administrative guidance, and additional legal claims. The consultations took place November 7-8. During the week of December 9, Japan responded to U.S. requests for additional information, and the United States is now reviewing the Japanese response.

19. ***Japan—Measures concerning imported consumer photographic film and paper (U.S. v. Japan)***

On June 13, 1996, the United States requested consultations with Japan under Article XXIII of the GATT 1994 regarding various laws, regulations and requirements of the Government of Japan affecting the distribution, offering for sale and internal sale of imported consumer photographic film and paper (WT/DS44/1). The measures include a number of laws, regulations and administrative actions, originating in Japan's strategy of liberalization countermeasures in this sector, and inhibiting sales of imported film and paper. These measures appear to violate GATT Articles III and X, and to nullify or impair benefits accruing to the United States directly or indirectly under the GATT. Consultations took place on July 11. On September 20, the United States requested a panel, and the DSB established the panel on October 16. The WTO Director General composed the panel on December 17. The panelists are William Rossier (Chair; Switzerland), Adrien Macey (New Zealand) and Victor do Prado (Brazil). The United States made its first submission on February 20, 1997. After two panel meetings, arguments have now closed. The panel report is due in December 1997.

20. ***Turkey—Discriminatory tax on film receipts (U.S. v. Turkey)***

Turkey imposes a discriminatory tax on box office receipts from exhibition of foreign films, which is not imposed on receipts from exhibition of Turkish films. On June 12, 1996, the United States requested consultations with Turkey under Article XXII of the GATT (WT/DS43/1). At the consultations held on July 25, Turkey agreed to eliminate the tax discrimination. Because Turkey failed to act on this issue, the United States requested a panel on January 9, 1997, and the panel was established at the February 25 meeting of the DSB, with Canada indicating third-party interest.

Recent developments: On July 17, the United States and Turkey jointly notified the DSB of the settlement reached between them, in which Turkey agreed to eliminate the tax discrimination.

21. ***Hungary—Compliance with UR agricultural export subsidy commitments (Argentina, Australia, New Zealand and U.S. v. Hungary)***

Hungary consulted on May 3, 1996, under the consultation provisions of the WTO Agreement on Agriculture, in response to a March 27 request by the United States, Argentina, Australia, Canada, New Zealand and Thailand, concerning Hungary's lack of compliance with its schedule commitments on export subsidies (WT/DS35/1). Japan also joined in the consultations. Follow-up consultations took place on May 24, July 24, September 19 and November 8. On January 9, 1997, the United States requested a panel, as did Argentina, Australia, and New Zealand. These panel requests were considered for the first time at the January 22 meeting of the DSB. A single panel was established at the February 25 meeting of the DSB to consider the separate complaints, with Canada, Uruguay, Thailand and Japan indicating third-party interest.

Recent developments: At the July 30 meeting of the DSB, Australia, acting on behalf of the four parties that had requested a panel, notified the DSB of a mutually agreeable solution reached between the four and Hungary. Hungary will apply for a temporary waiver to the Council on Trade in Goods, which will specify a program to bring Hungary into compliance with its commitments. The four parties will withdraw their panel request when a satisfactory waiver has been approved.

22. *Canada—Discrimination against split-run magazines (U.S. v. Canada)*

This dispute concerns Canada's measures against "split-run" and other imported magazines, including a ban on imports of magazines with advertising directed at Canadians, a special excise tax on split-run magazines, and discriminatory postal rates on imported magazines (WT/DS31). The United States brought this complaint as part of an investigation under Section 301 of the Trade Act of 1974. The panel was established on June 19, 1996. The first U.S. submission in this case was filed on September 5, Canada's first submission was filed on September 26, the first panel meeting took place on October 11, the second U.S. submission was filed on November 1, and the second panel meeting took place on November 14-15.

On March 14, 1997, the panel circulated its report to WTO Members. The panel found that Canada's import ban violates GATT Article XI, and is not justified as an exception under Article XX. In addition, the panel found that Canada's 80 percent excise tax violates Canada's national treatment obligations under GATT Article III:2. The panel concluded that the tax drew an artificial distinction between split-run and non-split-run magazines, which are "like products," and that it applied only to split-runs. Finally, the panel found that Canada's discriminatory postal rates for magazines mailed in Canada accord less favorable treatment to imported magazines than to like Canadian magazines, in violation of GATT Article III:4. However, the Panel found that this violation was excused in the case of Canada's so-called "funded" postal rates, because these rates qualify as a subsidy within the meaning of GATT Article III:8(b).

On April 29, Canada filed a notice of appeal. Canada appealed the panel's rejection of Canada's argument that the excise tax was governed by the GATS instead of the GATT, as well as the panel's findings under Article III:2; the United States then cross-appealed the panel's finding that Canada could provide discriminatory "funded" postal rates under GATT Article III:8(b). The appeal was heard by AB members Mitsuo Matsushita (Japan, presiding member); Claus-Dieter Ehlermann (Germany) and Julio Lacarte-Muró (Uruguay).

On June 30, the Appellate Body circulated its report, which rejected Canada's argument that the excise tax is a services trade measure; found that imported split-run magazines and domestic non-split-run magazines are "directly competitive or substitutable" under GATT Article III:2, second sentence; and agreed with the U.S. argument that Canada's "funded" postal rates for Canadian magazines violate GATT Article III.

Recent developments: On July 30, the DSB adopted the Appellate Body report, and the panel report to the extent not modified by the AB report; under the DSU, Canada must unconditionally accept the Appellate Body report. On August 29, Canada notified the DSB that it is Canada's intention to meet its obligations under the WTO with regard to this matter and Canada will require a reasonable period to do so. The notification also stated that it is Canada's intention to continue to pursue its cultural policy objectives, consistent with Canada's rights and obligations as a WTO Member.

23. *EU—Regime for the importation, sale and distribution of bananas (U.S., Ecuador, Guatemala, Honduras and Mexico v. EU)*

On May 8, 1996, the DSB established a panel in response to the April 11 panel request filed jointly and severally by Ecuador, Guatemala, Honduras, Mexico and the United States (WT/DS27). The panel examined the EU banana regime under the GATT 1994, the Agreement on Import Licensing Procedures, the Agreement on Trade-Related Investment Measures, the Agreement on Agriculture, and the General Agreement on Trade in Services (GATS). The first panel meeting took place on September 10-12 and the second panel meeting took place on October 16-17, 1996.

The final panel report was circulated on May 22, 1997. It found that the WTO's banana regime violates WTO rules on sixteen counts. On June 11, the EU filed a notice of appeal citing 19 points appealed. The Appellate Body Division for this appeal was: James Bacchus (U.S., Presiding Member), Christopher Beeby (New Zealand), and Said El-Naggar (Egypt). On June 23, the EU filed its appellant brief. On June 26, the five complaining parties filed their cross-appeal submission, appealing three of the panel findings.

Recent developments: The Appellate Body hearing took place on July 21-22, with the participation of the parties and the third parties (including Caribbean banana exporting countries). On September 9, the Appellate Body issued its report to the WTO and made it public. The Appellate Body report rejected almost all of the EU arguments advanced on appeal and accepted almost all of the arguments advanced by the five complaining parties. The panel's and Appellate Body's findings confirm the broad scope of the coverage of the GATS and will be particularly important in eliminating barriers to U.S. exports in distribution and other service sectors. The case also sets important precedents for agriculture trade in the areas of tariff quotas and import licensing.

EU measures found to be inconsistent with WTO rules include: (1) the EU's assignment of import licenses for Latin American bananas to French and British companies (whose previous business had been limited to the distribution of European, Caribbean and African bananas), taking away a major part of the banana distribution business U.S. companies had developed over this century; (2) the EU's assignment of import licenses for Latin American bananas to European banana ripening firms (which had not historically imported bananas), further taking away U.S. company business; (3) the EU's actions imposing more burdensome licensing requirements for imports

from the Latin American co-complainants than for other countries' bananas; and (4) the EU's discriminatory and trade-distorting allocation of access to its market for bananas, which departed from the fair-share standard of the WTO which focuses on past levels of trade.

The panel and the Appellate Body also affirmed that the tariff preferences over Latin American bananas which the EU currently provides to Caribbean banana exporting countries are consistent with the terms of a special WTO waiver the EU obtained for certain trade preferences for its former colonies. The United States did not challenge, and the WTO reports do not address, the zero-tariff preference for traditional Caribbean banana imports pre-dating the 1993 European regime.

The panel and AB reports will be adopted at the September 25, 1997 meeting of the DSB. At a DSB meeting within 30 days thereafter, the EU must state its intentions in respect of implementation of the recommendations and rulings in the reports.

24. *EU—Hormone ban (U.S. v. EU)*

In this dispute, the United States challenged the EU ban on imports of animals and meat from animals to which have been administered any of six hormones for growth promotion purposes (WT/DS27/1). The first U.S. submission in this case was filed on August 28, 1996, the first panel meeting took place on October 10, the second U.S. submission was filed October 28, and the second panel meeting took place on November 11. The panel decided to seek the advice of scientific experts, and on February 17, 1997, the panel held a meeting with the parties and the scientific experts, with Canada observing.

Recent developments: On August 18, the final panel report was circulated to the WTO and released to the public. The report upheld the claims of the United States, finding that the EU ban on the use of six hormones to promote the growth of cattle is inconsistent with the EU's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). In particular, the panel's report affirms that the EC's ban is not based on science. It was not based on a risk assessment or on the relevant international standards, and the EC has arbitrarily or unjustifiably distinguished between its policy for the hormones and other substances, resulting in discrimination or a disguised restriction on trade. The panel report will be proposed for adoption at the September 25, 1997 meeting of the DSB.

25. *Australia—Ban on imports of salmon (U.S. v. Australia)*

Australia bans imports of untreated fresh, chilled or frozen salmon from Canada and the United States, allegedly to protect fish health, even though a draft risk assessment found in 1995 that there is no risk of fish disease transmission from imports of eviscerated fish. In 1995, the United States requested consultations with Australia (WT/DS21/1). At the end of December 1996, Australia issued a risk assessment supporting the continuation of the import ban. On March 7, 1997, Canada requested a panel in a similar complaint concerning Australia's ban on imports of

salmon; see page 25 below. The DSB established the panel at its meeting of April 10. The United States has reserved its right to appear as a third party in that proceeding.

26. ***Japan—Taxes on distilled spirits (EU, Canada and U.S. v. Japan)***

The complaint in this case concerned Japan's tax rates on various types of distilled spirits, which favor the Japanese distilled spirit shochu by imposing high taxes on whiskey and vodka. The final panel decision was circulated to WTO Members on July 11, 1996. The panel found that Japan's tax rates on distilled spirits are inconsistent with Article III:2 of the GATT 1994, because the tax rate on vodka is higher than the tax rate on shochu, and because shochu and whisky, brandy, rum, gin, genever and liqueurs are not taxed similarly. The panel recommended that Japan change its liquor tax law, which up to now has provided a substantial excise tax advantage for shochu.

Japan then appealed the panel report on August 8. The appeal was heard by the following division of three members of the Appellate Body: Julio Lacarte (Uruguay, presiding member), James Bacchus (United States), and Said El Naggar (Egypt). On October 4, the Appellate Body issued its decision, affirming the panel's finding that Japan's tax rates are inconsistent with GATT Article III:2. However, the Appellate Body widened the product scope of the findings to call for similar taxation of all distilled spirits in HS 2208.

At a meeting of the DSB held on October 29 and November 1, the DSB adopted the Appellate Body report, and also adopted the panel report to the extent its findings had not been modified by the Appellate Body report. At the DSB meeting of November 20, Japan announced its intention to implement the recommendations in the reports. Due to a lack of agreement as to what would constitute a "reasonable period of time" for Japan's implementation of the recommendations, on December 24, the United States requested the appointment of an arbitrator to decide what would be a "reasonable period of time." Because the parties could not agree on an arbitrator, the United States requested that the WTO Director-General appoint an arbitrator, and on January 17, 1997, the WTO Director-General appointed Julio Lacarte (Uruguay - chairman of the Appellate Body). On February 14, 1997, Mr. Lacarte issued his decision in which he (1) rejected Japan's request for a 5-year implementation period, and (2) found that a reasonable period of time for implementation would be 15 months from the date of adoption of the Appellate Body and panel reports, or by February 1, 1998.

The U.S. Government is continuing to seek compliance by Japan within the 15-month deadline. Before each DSB meeting after August 1997, Japan must submit written status reports concerning its progress in implementation and Japan's implementation will be on the DSB's agenda for discussion. Japan's first status report is due on September 10, 1997.

27. ***Korea—Requirements for importation of perishable products (U.S. v. Korea)***

In Korea, import clearance for agricultural products typically takes two to four weeks, compared to three to four days elsewhere in Asia. The United States has raised at least five problem areas with respect to imports of agricultural products into Korea: (1) Korea's requirement that 100 percent of imported products be inspected and tested rather than subjecting them to a random sampling regime; (2) the requirement that imported fruit be subjected to expensive and time consuming fumigation requirements for insects already found and not controlled in Korea (so-called "cosmopolitan pests"); (3) the requirement that every shipment of imported fresh produce be unpacked, sorted and repacked to remove any spoiled product; (4) the requirement for incubation testing of certain products, particularly those from pest-free areas; and (5) the replacement regime for the system of self-specification, which requires all new products to meet "common standards" which are not based on scientific risk assessment.

Shortly after the United States requested Article XXII consultations under WTO dispute settlement procedures in April 1995 (WT/DS3/1), Korea revised its inspection procedures to allow fresh fruit and vegetables to clear customs within five to eighteen days while awaiting test results. Further consultations were held in Geneva in May and June 1995. Korea agreed to reform its food inspection and sanitation system by March, 1996. Technical talks were held in the fall of 1995 with USDA. Consultations in April 1996 to review Korea's promised reforms showed that Korea had not implemented most reforms and had not addressed the basic import barriers.

On May 24, 1996, the United States again asked for consultations under the GATT, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Technical Barriers to Trade, and the Agreement on Agriculture regarding Korea's requirements for importation of agricultural products (WT/DS41/1). Consultations were held on June 20. Further consultations took place on January 30-31, 1997.

B. Proceedings in which the United States is a defendant (11)

1. United States—Import ban on EU poultry products (EU v. U.S.)

New case: On August 18, 1997, the EU requested consultations with the United States concerning a ban on imports of EU poultry and poultry products, imposed on May 5, 1997 by the Food Safety Inspection Service of the U.S. Department of Agriculture until the United States is able to obtain additional assurances of adequate product safety. The EU cites various provisions of the GATT, the Agreement on Technical Barriers to Trade, and the Agreement on the Application of Sanitary and Phytosanitary Measures. The parties are discussing a date for consultations.

2. United States—Antidumping measures on DRAMs from Korea (Korea v. U.S.)

New case: On August 15, the United States received a request by Korea for consultations concerning the Commerce Department's antidumping review of dynamic random access memory (DRAM) semiconductors from Korea. Korea alleges that Commerce's decision not to revoke the antidumping order was inconsistent with provisions of the WTO Antidumping Agreement. Consultations will be held on October 10.

3. United States—Countervailing duty investigation of salmon from Chile (Chile v. U.S.)

New case: On August 5, Chile requested consultations concerning the Department of Commerce's initiation of a countervailing duty investigation of salmon from Chile. Chile alleges that the decision to initiate was inconsistent with the Agreement on Subsidies and Countervailing Measures and that the petitioners did not represent the domestic salmon industry. Consultations will be held on September 26.

4. United States—Antidumping measures on televisions from Korea (Korea v. U.S.)

New case: On July 10, Korea requested consultations concerning a U.S. antidumping order on color television receivers (CTVs) from Korea (WT/DS89/1). Korea alleges that no CTVs have been exported to the United States since 1991 and from 1985 to 1991, there were *de minimis* dumping margins on CTVs from Korea; a Commerce Department revocation review is underway but the result of this review awaits the result of circumvention proceedings initiated in 1996 at the request of labor unions. Consultations were held on August 7. A second round of consultations will be held on October 9.

5. United States—Massachusetts Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar) (EU v. U.S., Japan v. U.S.)

On June 20, the EU requested consultations under the Agreement on Government Procurement concerning the Act Regulating State Contracts with Companies doing Business with or in Burma

(Myanmar) enacted by the Commonwealth of Massachusetts on June 25, 1996 (Chapter 130 of the Acts of 1996). This statute applies a pricing penalty on state procurements from companies that do business in Burma. The EU alleges that the Massachusetts law violates Articles VIII(b), Article X and Article XIII of the GPA. On July 18, Japan also requested consultations concerning the same matter. USTR is coordinating with Massachusetts government officials as provided in section 102(b)(1)(C) of the Uruguay Round Agreements Act.

Recent developments: The consultations were held on July 22 with both the EU and Japan. A further round of consultations will be held next month.

6. *United States—Rule of origin for textiles and apparel (EU v. U.S.)*

On May 23, the United States received an EU request for consultations under GATT Article XXII, the Agreement on Textiles and Clothing (ATC) , the Agreement on Rules of Origin, and the Agreement on Technical Barriers to Trade (TBT) concerning U.S. rules of origin for textile and apparel products (WT/DS85/1). The EU request states that these rules adversely affect exports of EU fabrics, scarves and other flat products to the United States; it cites possible incompatibility with ATC Articles 2.4, 4.2 and 4.4, Article 2 of the Agreement on Rules of Origin, GATT Article III and Article 2 of the TBT Agreement.

Recent developments: On July 15, the EU and United States agreed to commit themselves to achieving a satisfactory resolution in this case, in the context of the 1997-98 WTO negotiations on harmonization of rules of origin for textiles; the United States also agreed to propose legislative changes to the U.S. marking statute with respect to silk scarves and silk fabric, and to other measures. In light of this agreement, the consultations were not held.

7. *United States—Safeguard measure on imports of broom corn brooms (Colombia v. U.S.)*

On April 28, Colombia asked for consultations under GATT Article XXII and the Agreement on Safeguards concerning Presidential Proclamation 6961 of November 28, 1996, adopting a safeguard measure on imports of broom corn brooms under Section 201 of the Trade Act of 1974 (WT/DS78/1). The Colombian request cited possible inconsistency with Articles 2, 4, 5, 9 and 12 of the Agreement on Safeguards and Articles II, XI, XIII and XIX of the GATT 1994. Consultations were held on May 30.

8. *United States—Anti-dumping measures on imports of solid urea from the former German Democratic Republic (EU v. U.S.)*

On December 9, 1996, the EU requested consultations concerning an outstanding U.S. antidumping order on solid urea from Germany (WT/DS63/1). The Department of Commerce had issued the order in 1987 against imports of urea from the former German Democratic Republic (GDR). In its request, the EU claimed that by maintaining the order against the five

States of the former GDR, Commerce had ignored the *de jure* and *de facto* integration of the new States into the reunified Federal Republic of Germany, and thus the economic integration of the companies in the new States into the German market economy. According to the EU, the alleged failure to take into account the conversion of a territory from a nonmarket economy into a market economy and the full privatization of the exporter enterprises constituted a violation of Article 11 of the WTO Antidumping Agreement. In addition, the EU claimed that Article 9.2 of the Antidumping Agreement precluded the imposition of duties on imports from only a region or part of a country. Finally, the EU cited the continued suspension of liquidation of entries of urea from exporters situated in the territory of the former Federal Republic of Germany, and requested an explanation of the legal basis for the suspension. Consultations were held on December 18, 1996.

9. *United States—Measures relating to the importation of shrimp and shrimp products (India, Malaysia, Pakistan, Thailand v. U.S.)*

On October 8, 1996, India, Malaysia, Pakistan, and Thailand requested consultations under GATT Article XXII concerning the requirements imposed on importation of shrimp and shrimp products from these countries by the United States under §609 of P.L. 101-162 (codified at 16 U.S.C. §1537 note) and guidelines issued thereunder on April 19, 1996. The consultation request alleged that these measures violate provisions including GATT Articles I, XI and XIII and that these violations are not justified by the exceptions in GATT Article XX (WT/DS58/1). On October 25, the Philippines also requested consultations under GATT Article XXII concerning the same U.S. law, and also alleged that the measure violates Article 2 of the Agreement on Technical Barriers to Trade (WT/DS61/1). On November 19, consultations were held between the United States, India, Malaysia, Pakistan, Thailand and the Philippines. Australia, Colombia, Hong Kong, the EU and Japan participated as interested third parties. On January 9, 1997, Thailand and Malaysia requested a panel. The panel request was considered for the first time at the January 22 DSB meeting. On February 7, Pakistan requested the establishment of a panel. A single panel was established at the February 25 meeting of the DSB to hear the complaints of Malaysia, Thailand and Pakistan. On February 26, India requested that it be added as a co-complainant. At its April 10 meeting, the DSB established a panel with respect to India's request, and consolidated this panel with the panel established on February 25. Australia, Colombia, Costa Rica, Ecuador, El Salvador, the European Communities, Guatemala, Hong Kong, Japan, Mexico, Nigeria, the Philippines, Senegal, Singapore, Sri Lanka and Venezuela Venezuela have reserved third-party rights to participate in the panel proceedings. On April 15, the parties agreed on the following panelists: Michael Cartland (Hong Kong, chair), Carlos Cozendey (Brazil), and Kilian Delbrück (Germany). The first U.S. submission was filed on June 9. The panel held its first meeting with the parties on June 17-18.

Recent developments: The rebuttal submissions of the parties were submitted on July 28.

10. ***United States—Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (EU v. U.S.)***

On May 3, 1996, the EU asked for WTO consultations concerning the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (the Helms-Burton Act) and three pre-existing provisions of our Cuban boycott legislation, regarding their consistency with the GATT and the GATS (WT/DS38/1). Consultations were held on June 4 in Geneva, and a follow-up round was held on July 2 in Geneva. The EU requested the establishment of a panel on October 3. On November 20, the DSB established a panel in response to the EU's request. On February 3, 1997, the EU asked WTO Director-General Ruggiero to appoint panelists. On February 20, the Director-General appointed the following panelists: Arthur Dunkel (chair, Switzerland); Tommy Koh (Singapore); and Edward Woodfield (New Zealand). In response to the appointment of the panel, USTR and the Department of Commerce announced that unless the dispute with the EU was resolved promptly, the United States would issue a formal statement to the effect that the panel is not competent to decide the matter inasmuch as the challenged measures reflect longstanding U.S. foreign policy and national security concerns regarding Cuba.

On April 11, 1997, the EC tentatively announced it would suspend its WTO case while it pursues with the United States an agreement establishing disciplines governing the acquisition of, and dealings in, investments expropriated in violation of international law. The Administration will consult with the Congress regarding a possible amendment to Title IV of the Helms-Burton Act providing the President with the authority to waive application of that Title to EC companies once the disciplines have been agreed and provided there is adherence to such disciplines. The EC reserved the right to reinstitute its WTO case if the United States takes action under the Act, or the Iran-Libya Sanctions Act, adversely affecting European interests. On April 25, the panel chairman gave notice that the EC had formally requested the panel to suspend the panel proceedings.

11. ***United States—EPA regulations on reformulated and conventional gasoline (Venezuela and Brazil v. U.S.)***

On May 20, 1996, the DSB adopted the Appellate Body report in this case, and also adopted the panel report which preceded it, to the extent that the panel report was not modified by the Appellate Body report. At the DSB meeting of June 19, 1996, the United States informed the DSB of its intention to implement the recommendations in the reports. At the DSB meeting of December 3, 1996, Venezuela and the United States advised the DSB that they had agreed that the "reasonable period" for implementation of the recommendations in this case would be 15 months. On January 9, 1997, under Article 21.6 of the DSU, the United States submitted to the DSB its first status report regarding implementation of the recommendations. The report was considered at the January 22 meeting of the DSB, and further status reports have been considered at each DSB meeting since then.

Recent developments: On August 20, the United States informed the DSB that USEPA Administrator Carol Browner had signed a final rule on reformulated and conventional gasoline. This rule completes the implementation process in this proceeding. The rule was published in the Federal Register on August 28 (62 FR 45533-45568) and appears online at http://www.epa.gov/OMSWWW/rfg.htm. The rule was developed through rulemaking procedures in compliance with the Administrative Procedures Act and the Uruguay Round Agreements Act.

C. Proceedings in which the U.S. is a third-party (amicus) participant (8)

1. EU—Tariff rate quota on poultry meat products (Brazil v. EU)

New case: On July 30, the DSB established a panel to examine Brazil's complaint against the EU's administration of its tariff rate quota on poultry meat products. Brazil asserts that the EU has failed to comply with an agreement reached between Brazil and the EU in 1993 in connection with the EU's attempt to renegotiate its tariff concessions on oilseeds; in return for accepting changes by the EU, Brazil was promised a preferential allocation of rights in the EU's tariff-rate quota (TRQ) on chicken parts. However, the EU had later allocated its TRQ on the basis of historical market share, diminishing Brazil's share. Brazil also alleges that the EU is maintaining special safeguard provisions that do not meet the requirements of Articles 4 and 5 of the Agreement on Agriculture, and that both the TRQ and the safeguard are maintained in a non-transparent manner. The United States reserved the right to present views as an interested third party. The panelists will be Wilhelm Meier (Switzerland), chair, Peter May (Australia) and Magda Shahin (Egypt). (WT/DS100)

2. India—Import quotas on agricultural, textile and industrial products (Australia, Canada, EU, New Zealand and Switzerland v. India)

New case: On July 16, Australia, Canada, New Zealand and the United States requested consultations under Article XXII of GATT 1994 and the Agreement on Import Licensing concerning import quotas on over 2700 product categories maintained by India. India was formerly entitled to maintain such quotas under the balance-of-payments (BOP) exceptions of GATT, but its BOP justification ended earlier this year. Consultations on the same measures were also requested on July 18 by Switzerland, and on July 21 by the EU. The United States and the other parties have each requested to be joined in each other's Article XXII consultations and to have all the consultations held at once, but India has refused the requests. (WT/DS91, 92, 93, 94, 96)

3. Chile—Taxes on alcoholic beverages (EU v. Chile)

On June 4, 1997, the EU requested consultations with Chile under GATT Article XXII concerning Chile's Special Sales Tax on distilled spirits, which imposes a higher tax on imported

spirits than on pisco, a local spirit (WT/DS87/1). On June 23, the United States requested to be joined in these consultations on the basis of its substantial trade interest.

Recent developments: The consultations were held on July 3.

4. *Indonesia—National car program (EU and Japan v. Indonesia)*

On June 12, 1997, panels were established in response to requests by EU and Japan; the panel proceedings were consolidated.

Recent developments: On June 30, a panel was established in response to a request by the United States in the same matter; see description beginning on page 8. The U.S.-Indonesia panel has been consolidated with the other two panels.

5. India—Mailbox and exclusive marketing rights (EU v. India)

On April 28, 1997, the EU requested plurilateral consultations with India concerning India's failure to provide a "mailbox" mechanism and exclusive marketing rights for pharmaceutical and agricultural chemical inventions under Articles 70.8 and 70.9 of the TRIPS Agreement (WT/DS79/1). The United States participated in these consultations. A panel has considered the United States' complaint against India concerning the same failure to implement the TRIPS Agreement and the panel report in that case was released on September 5 (see page 12 above).

6. Argentina—Measures affecting textiles, clothing and footwear (EU v. Argentina)

On April 23, 1997, the EU requested plurilateral consultations with Argentina (WT/DS77/1) concerning Argentina's application of specific duties to footwear, textiles and apparel (citing possible violations of Articles II and XXVIII of GATT 1994) and Argentine legislation requiring inclusion in labels on these products of the name of the importers and the number of the affidavit submitted by the importer to the Government of Argentina (citing possible violation of Article 2 of the Agreement on Technical Barriers to Trade). In addition the EU cited possible violation of Article 7 of the Agreement on Textiles and Clothing. The United States attended the EU-Argentina consultations held on June 12. A panel is now considering the United States' complaint concerning Argentina's specific duties (see page 10 above). The EU submitted views as an interested third party in the U.S.-Argentina case.

7. Korea—Taxes on alcoholic beverages (EU v. Korea)

On April 4, 1997, the EU requested plurilateral consultations with Korea concerning Korea's taxes on distilled spirits under the Liquor Tax Law and the Education Tax Law (WT/DS75/1). Korea taxes whisky and other Western-type distilled spirits at rates far less than the rates applicable to soju, a Korean distilled spirit. On May 23, the United States also requested

consultations with Korea in its own right concerning the same measures (see page 5 above). On May 29, the United States and Canada attended the EU-Korea consultations.

8. Japan—Procurement of a navigation satellite (EU v. Japan)

Japan's Ministry of Transportation procured a satellite navigation system for air traffic management in 1996. The request for proposal required that the system be interoperable with a U.S. air traffic navigation system. On March 26, 1997, the EU requested plurilateral consultations, alleging that the procurement violated Articles III, VI(2) and XII(2)(g) of the Agreement on Government Procurement (WT/DS73/1). The consultations were held on April 25, with the United States present as an interested party. On July 31, the EU notified the DSB of a bilateral settlement of the dispute.

9. *Australia—Measures affecting imports of fresh, chilled or frozen salmon (Canada v. Australia)*

Australia bans imports of untreated fresh, chilled or frozen salmon from Canada and the United States, allegedly to protect fish health, even though a draft risk assessment found in 1995 that there is no risk of fish disease transmission from imports of eviscerated fish. After a 1995 consultation request (WT/DS18/1), Canada consulted with Australia on these restrictions with the United States participating. At the end of December 1996, Australia issued a risk assessment supporting the continuation of the import ban. On March 7, 1997, Canada requested the establishment of a panel, and a panel was established at the April 10 meeting of the DSB, with the EU, India, Norway and the United States reserving the right to appear as interested third parties. The panel was announced on May 28 and consists of Michael Cartland (Hong Kong, chair), Kari Bergholm (Sweden) and Claudia Orozco (Colombia).

10. *Guatemala—Anti-dumping investigation regarding portland cement from Mexico (Mexico v. Guatemala)*

On February 4, 1997, Mexico requested the establishment of a panel to examine the Guatemalan anti-dumping investigation on portland cement from Mexico (WT/DS60). At its meeting on March 20, the DSB established a panel. Canada, El Salvador, Honduras and the United States have reserved their rights as third parties. After failure to reach agreement on panelists, on April 21 Mexico requested the WTO Director-General to compose the panel. The panel was constituted on May 1 and consists of Klaus Kautzor-Schröder (Germany, retired GATT Secretariat, chair), Christopher Norall (Canada), and Gerardo Teodoro Thielen Graterol (Venezuela). Mr. Norall resigned as panelist and was replaced by Antonio Buencamino (Philippines). The United States submitted its views as an interested third party on June 25.

11. *EU—Hormone ban (Canada v. EU)*

On July 25, 1996, the EU held consultations with Canada under GATT Article XXII and analogous provisions concerning the EU hormone ban. Canada then requested a panel, and establishment of that panel was approved at the October 16 meeting of the DSB. The United States, Australia, New Zealand and Norway reserved rights to appear as interested third parties in this case. The panelists for this panel are the same as the panelists in the U.S. challenge to the EU hormone ban. Canada filed its first submission on December 3. On February 18, 1997, the panel held a meeting with the parties and the scientific experts appointed by the panel, with the United States observing. The panel report was circulated to the WTO on September 5, and broadly upheld the claims of Canada. The panel report will be proposed for adoption at the September 25, 1997 meeting of the DSB.

II. NAFTA - CHAPTER 20

A. Proceedings in which the United States is a plaintiff (2)

1. *Mexico—Retaliatory action in response to U.S. safeguard action on broomcorn brooms*

On March 11, 1997, the United States requested consultations with Mexico concerning Mexico's increase in tariffs on certain products in response to the U.S. safeguard action on broomcorn brooms. The tariff increases appear to exceed those permitted by the NAFTA. Consultations were held on April 8.

2. *Mexico—Small parcel delivery (UPS) (U.S. v. Mexico)*

Mexico discriminates against U.S. trucking firms wishing to deliver small packages in Mexico. Consultations with Mexico and discussions of this issue at a NAFTA Commission meeting were held in 1995. Discussions continue between the governments.

B. Proceedings in which the United States is a defendant (5)

1. *United States—Tariff classification of limes*

New case: On July 4, 1997, the United States received a request from Mexico for consultations under NAFTA Chapter 20 concerning an internal notice of the U.S. Customs Service clarifying the tariff classification of Persian limes. The consultations were held on July 17.

2. ***United States—Designation of Mexicali valley as disease-free area***

On April 9, 1997, Mexico asked for consultations under NAFTA Chapter 20 concerning a request for designation of the Mexicali valley as free from karnal bunt disease for purposes of wheat exports.

Recent developments: Consultations were held on July 17.

3. *United States—Sugar Containing Products Re-export Program*

On October 23, 1996, Canada requested consultations under NAFTA Chapter 20 with respect to the U.S. Sugar Containing Products Re-export Program, claiming that the program is inconsistent with U.S. NAFTA obligations or is causing nullification or impairment of benefits to Canada under NAFTA. Consultations were held on November 20, 1996.

Recent developments: On September 8, the two governments finalized the terms of a settlement agreement in this dispute. Canada has agreed not to pursue dispute settlement proceedings with respect to this program. Beginning in the 1997-98 quota period, the United States will allocate to Canada a share of the in-quota quantity of the U.S. TRQ for refined sugar for sugar that is a product of Canada, and a share of the in-quota quantity of the U.S. TRQ for sugar-containing products for sugar-containing products that are the product of Canada. Canada will also be permitted to compete for any quantity of the refined sugar TRQ that is not allocated among supplying countries and is not reserved for specialty sugar, without regard to whether the share allocated to Canada for that period has been filled. The settlement agreement also allows the United States to transfer any unused quantity of Canada's sugar-containing products allocation to the portion of that TRQ that is not allocated among supplying countries, if Canada informs the United States that it cannot fill its share.

3. *United States—USITC serious injury determination on broomcorn brooms (Mexico v. U.S.)*

On August 21, 1996, Mexico requested consultations under NAFTA Chapter 20 concerning the USITC determinations of serious injury transmitted to the President on August 1, in the USITC's investigations of imports of broomcorn brooms conducted under Section 201 of the Trade Act of 1974 as amended and the special safeguard provisions of NAFTA. The specific issue was the USITC's finding that the product "like or directly competitive with" these imports was broomcorn brooms, and did not include plastic brooms. On September 6, the United States and Mexico consulted under Chapter 20. On December 2, the President announced his decision to provide tariff relief and adjustment assistance to the domestic industry. On January 14, 1997, Mexico filed a request for the establishment of a panel under NAFTA Chapter 20. The panel was established on January 14, 1997; its chairman is Paul O'Connor (Australia) and its members are John Barton and Robert Hudec (United States) and Raymundo Enriquez and Dionisio Kaye (Mexico).

Recent developments: Mexico's brief was submitted on July 31 and the U.S. brief was submitted on August 25. The panel hearing will take place on September 9.

4. *United States—Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Canada and Mexico v. U.S.)*

On April 20, 1996, the United States consulted with Canada and Mexico under NAFTA Chapter 20 on Titles III and IV of the Helms-Burton Act. Further consultations were held on May 28. On June 17, Canada and Mexico requested a meeting of the NAFTA Commission under NAFTA Article 2007 to consider Canadian and Mexican concerns regarding Titles III and IV. On June 28, 1996 the NAFTA Commission convened.

5. *United States—Implementation of NAFTA provisions on trucking (Mexico v. U.S.)*

On January 19, 1996, the United States consulted with Mexico at Mexico's request concerning U.S. implementation of its NAFTA commitments on trucking.

III. NAFTA and USCFTA - CHAPTER 19
(Binational Review of Domestic AD/CVD Determinations)

In almost four years since NAFTA entered into force, Chapter 19 panels have completed twelve appeals (six concerning U.S. determinations, two concerning Mexican determinations and four concerning Canadian determinations). Chapter 19 panels are currently considering five appeals, including one involving a U.S. determination, one involving a Canadian determination, and three involving Mexican determinations. All Chapter 19 cases have involved U.S. determinations or U.S. exporters, except for two cases begun in 1996 involving appeals of Mexican antidumping determinations on Canadian steel. All CFTA Chapter 19 appeals have been completed. A current list of all Chapter 19 proceedings is available from the U.S. National Section of the NAFTA Secretariat at (202) 482-5438.

IV. NAFTA - CHAPTER 11
(Investor-State Claims Arbitration)

1. Desechos Solidos de Naucalpan "DESONA" v. Mexico

Desona was awarded a 15-year concession by the county of Naucalpan for management of solid waste in 1993. The county council nullified the agreement shortly after a contract was signed. According to counsel, on December 9, 1996, DESONA notified the Government of Mexico of its intent to file a claim through the Additional Facility Rules of the International Center for the Settlement of Investment Disputes ("ICSID"), and filed a notice of claim in March 1997. ICSID has accepted and registered the claim. The parties are now establishing an arbitral tribunal.

2. Metalclad Corporation v. Mexico

On January 3, 1997 the Metalclad Corporation notified the Government of Mexico of its intent to file a claim through the ICSID Additional Facility Rules. Metalclad's claim charges that Mexico, primarily through the state government of San Luis Potosí, has unlawfully expropriated its hazardous waste landfill in the community of Guadalcazar; and, in further violation of the NAFTA, has failed to accord Metalclad fair and equitable treatment and treatment in accordance with international law as well as due process. Metalclad claims damages equal to the project's fair market value, estimated to be in excess of $50 million. The three-member arbitral tribunal met initially in Washington, D.C. on July 15, 1997. Metalclad will have 90 days to file its memorial in the case, Mexico will have a further 90 days to file its counter-memorial, and then Metalclad and the tribunal will decide whether to have another round of submissions and whether an oral hearing will be necessary. Any further meetings of the tribunal will take place in Vancouver.

3. Ethyl Corporation v. Canada

On April 14, 1997, Ethyl Corporation notified the Government of Canada of its intent to seek referral of a dispute to arbitration under the UNCITRAL Rules. The request concerns Canadian Bill C-29, legislation to ban importation and interprovincial trade in (but not production or use of) a fuel additive sold by Ethyl, methylcyclopentadienyl manganese tricarbonyl (MMT). MMT is produced in the United States and processed by a Canadian subsidiary of Ethyl. Ethyl alleges that the legislation denies national treatment and constitutes an expropriation of Ethyl Canada, a domestic content requirement and a requirement to purchase domestic goods. Ethyl seeks an award of US$250 million damages plus costs.